

independent and dependent claims that may not include particular limitation(s) of an elected species that still are encompassed by the elected species (e.g. a current release drug delivery device that includes collagen and analgesics that is crosslinked by glutaraldehyde, but does not include a polymeric material). The Applicant expects that such species would be included in the examination of the present application.

Applicants traverse the restriction requirement on the grounds that no serious burden on the Examiner exists. If the search and examination of an entire application can be made without serious burden, it must be examined on the merits even though it includes claims directed to distinct or independent invention. M.P.E.P § 803. The subject matter of Group I and Groups II - IV are believed sufficiently related that a thorough search for the subject matter of any one group would encompass a search for the subject matter of all groups. For example, many of the limitations of the claims directed to the current released drug delivery system are also present in the method of preparation of Group II and the protein matrix product claims and method of making claims of Groups III and IV. To avoid duplicative examination by the Patent Office and unnecessary delay and expense to Applicants, Applicants respectfully request examination on the merits of all the claims, not just those of Group I.

Furthermore, Applicants submit that if a determination of an allowable product claim is issued, for instance the determination of allowability of claims 1 and/or 50 in the present application, claims that include all the limitations of the allowed generic claim(s) should be considered and rejoined. See M.P.E.P. § 821.04. Therefore, the Applicants respectfully request that if the elected product claims of Group I are found allowable, the Examiner consider rejoining the method of making claims of Group II and the protein matrix product claims and method of making claims of Groups III and IV.

Finally, it is to be understood that the election of a species in the present response is for the sole purpose of the Examiner's initial search and examination, and that the allowance of a generic claim should be construed as an indication that all species encompassed by that claim have been searched and examined. Such an interpretation of the initial search and examination of species is governed by the Manual of Patent Examining Procedure. See M.P.E.P. § 809.02(c). Therefore, Applicants respectfully request that the search be conducted to thereby provide for the inclusion of all species included in the generic claim and all claims dependent thereon.

The Examiner is invited to telephone the undersigned if the Examiner believes it would be useful to advance prosecution.

Respectfully submitted,

/John F. Dolan/

John F. Dolan  
Registration No. 45,382

Customer No. 22859  
FREDRIKSON & BYRON, P.A.  
200 South Sixth Street, Suite 4000  
Minneapolis, Minnesota 55402-1425  
Telephone: (612) 492-7000  
Facsimile: (612) 492-7077

*Please grant any extension of time necessary for entry; charge any fee due to Deposit Account No. 06-1910.*